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WM. R. STANSBURY
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Supreme Court of the United States

OCTOBER TERM, 1925.

No. ~~[illegible]~~ 412.

BEDFORD CUT STONE COMPANY, et als.,

Petitioners and Appellants,

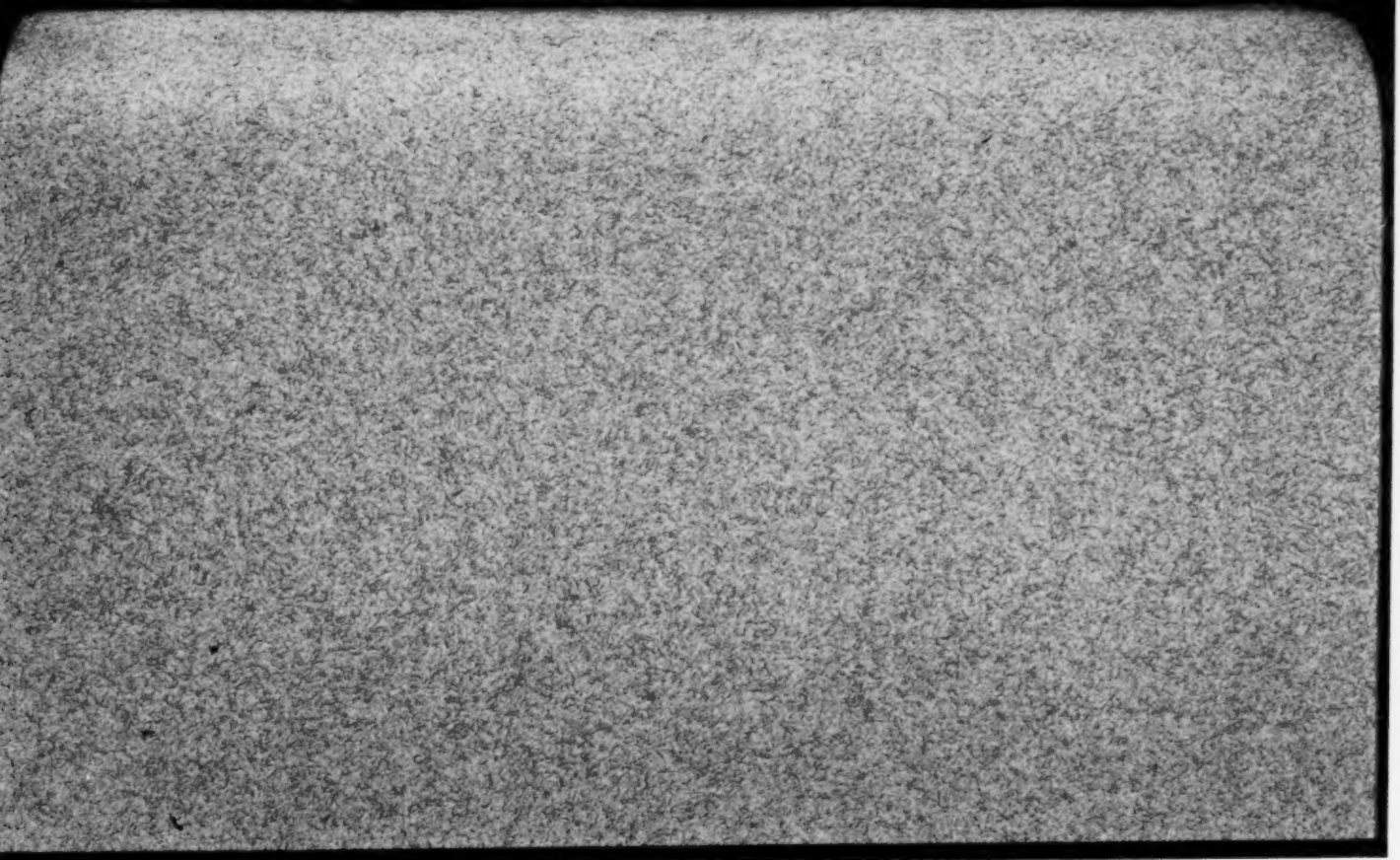
against

JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als.,

Respondents and Appellees.

APPLICATION AND PETITION FOR WRIT OF CERTIORARI.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Counsel for Petitioners.



Supreme Court of the United States

BEDFORD CUT STONE COMPANY, et als., Petitioners and Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als., Respondents and Appellees.	October Term, 1925.

Come now the Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company and The Hoosier Cut Stone Company, by Daniel Davenport, Charles Martindale and Walter Gordon Merritt, their counsel, and move this Honorable Court that it shall by

certiorari, or other proper process, directed to the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, require said Court to certify and remove into this Court for its review and determination a recent cause in said United States Circuit Court of Appeals, lately pending, wherein the petitioners were appellants and the respondents were appellees, and to that end it now tenders herewith its petition, with a certified copy of the entire record in said cause.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES.

BEDFORD CUT STONE COMPANY, et als., Petitioners and Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als., Respondents and Appellees.	October Term, 1925.

Petition for a Writ of Certiorari.

To be addressed to the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Your petitioners, the Bedford Cut Stone Company, The Central Oolitic Stone Company, The Chicago & Bloomington Stone Company, The Consolidated Stone Company, Crescent Stone Company, C. D. Donato Cut Stone Company, Empire Stone Company, The Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, The Imperial Stone Company, Indiana Quarries Company, Inter-State Cut Stone Company, W. McMillan & Son, Matthews Bros. Company, Mathers Stone Company, Monroe County Oolitic Stone Company, National Stone Company, Perry Stone Company, Reed-Powers Cut Stone Company, John A. Rowe Cut Stone Company, Star Stone Company, Henry Struble Cut Stone Company, J. P. Falt Company and The Hoosier Cut Stone Company, respectfully show to the Court as follows:

This suit was commenced in the District Court of the United States for the District of Indiana on or about October 6, 1924.

The petitioners (herein called complainants) are each of them producers of Indiana lime stone in the State of Indiana. The respondents (herein called defendants) are certain stone cutters unions and their officers, and particularly the Journeymen Stone Cutters Association of North America, composed of about 150 local unions situated in the different states of the United States.

The complaint alleges a combination and conspiracy to restrain the complainants' interstate trade and commerce by calling strikes of stone cutters working for building contractors on buildings in states outside of Indiana, because stone produced by the complainants in Indiana is being used on or in connection with said buildings. An injunction and damages is sought.

On November 13, 1924, the District Court denied complainants' motion for a preliminary injunction, and on October 28, 1925, the Circuit Court of Appeals for the Seventh Circuit, in an opinion reported 9 Fed. (2d) 40, affirmed said order.

Subsequently, by stipulation, the case was submitted to the District Court for final hearing on the same record as that presented for a preliminary injunction, together with the answer. On this final record the District Court dismissed the bill on April 21st, 1926.

Thereupon complainants appealed to the Circuit Court of Appeals from said order of dismissal, which, court on May 14th, 1926, affirmed per curiam the judgment of dismissal.

The principal question involved is whether the alleged combination constitutes a violation of the Sherman Anti-Trust Law. There is no substantial dispute of facts.

The evidence shows that the Indiana producers operated on a union basis until about May 1st, 1921, at which time the producers and the unions were unable to reach an agreement for future operation. The producers thereupon reorganized their producing forces, and the defendants, in order to compel unionization, undertook to enforce a union rule throughout the United States to the effect that members should not be allowed to work *on material* "cut by men working in opposition" to the union. Accordingly, complainants' customers suffered from strikes on buildings in various states where complainants' products were being used, and a general proscription of complainants' products by this means was threatened. Union representatives stated, in substance, that the purpose was to induce the complainants to unionize by forcing the contractors (complainants' customers) all over the country to refrain from using petitioners' products.

The evidence clearly shows that enforcement of the rule of the unions is applied at the point of delivery and use of petitioners' products in states other than the state of production for the avowed purpose of restraining such delivery and use.

The question of law is similar to the question presented in the case of Brims v. United States, 6 Fed. (2d) 98, wherein the same Circuit Court of Appeals reversed a conviction for violation of the Anti-Trust Law. The Brims case is now No. 719 on the docket of this court, where it was brought by writ of certiorari, granted on motion of the United States.

In the Brims case it appeared—as in the case of Paine v. Neal, 244 U. S. 459—that agreements between the carpenters' union and certain contractors in Chicago permitted the union workmen to discriminate against non-union woodwork, with the result that interstate shipments thereof from Oshkosh, Wisconsin, to Chicago, declined.

The Circuit Court of Appeals found that the indictment charged an obstruction of commerce, but the proof merely disclosed an agreement not to work on non-union woodwork.

Reasons in Support of Petition.

Your petitioners submit, in support of their petition, the following reasons and arguments:

(a) The issues involved are so similar to those presented in the case of Brims v. United States that a decision in that case, without consideration of this case, might be prejudicial. In order to make it possible for this court to consider both of these cases at or about the same time, if this application is granted, petitioners will move to advance.

(b) The record shows that the United States Circuit Court of Appeals did not attempt thoroughly to pass upon the merits, but based its conclusion on its decision rendered in connection with the preliminary injunction, where the majority of the court merely held that the refusal of the *preliminary* injunction was not improper.

(c) We submit the case at bar is controlled by the decision of this court in Duplex Printing Press Co. v. Deering, 254 U. S. 443, which decision is not mentioned in the opinion of the United States Circuit Court of Appeals. Notwithstanding the fact that the interference in question was with the sale, distribution and installation of products in interstate commerce, the Circuit Court of Appeals relied upon cases holding that interference with production did not constitute a combination in violation of the Sherman Anti-Trust Law.

(d) The question involved is one of great public interest, and the complainants' annual sales are about $15,000,000. The erroneous decision of this Circuit Court of Appeals will cause confusion, strife and loss.

(e) The question at issue is one which could have been brought before this Court as a matter of right prior to the Act of February 13, 1925.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court to the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, commanding them to certify and remove the said bill of complaint and all proceedings therein into this Honorable Court, and to stand to and abide by such order and direction as to your Honors shall seem meet and the circumstances of the case require, and that petitioners may have such other and further relief or remedy in the premises as to this Court may seem proper.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Solicitors and Attorneys for Petitioners.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

WALTER GORDON MERRITT, being duly sworn, says that he is one of the solicitors and attorneys for the petitioners above named; that he has read the foregoing and annexed petition, and knows well the contents thereof, and he has also carefully read and studied the record in the case of Bedford Cut Stone Company, et als., appellants, against Journeymen Stone Cutters Association of North America, et als., appellees; that the matters of fact stated in said petition in respect to the record are fully supported in and by said transcript of record, and are true to his knowledge, information and belief.

WALTER GORDON MERRITT.

Subscribed and sworn to before me
this 26th day of May, 1926.

JANE RICHARDS,
Notary Public,
Westchester County.
Cert. filed in N. Y. Co. No. 863, Reg. No. 7063.
Cert. filed in Kings Co. No. 115, Reg. No. 7388.
Cert. filed in Queens Co. 2380 and Nassau Co.
Commission expires March 30th, 1927.

This petition is not intended for delay, and, in our opinion, is well founded in law.

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1925.

No. .

BEDFORD CUT STONE COMPANY, et als.,
Petitioners and Appellants,

vs.

JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA, et als.,
Respondents and Appellees.

To

FREDERICK VAN NUYS,
American Bank Building,
Indianapolis, Indiana,
Counsel for Respondents.

Sir:

You are hereby notified that a petition for a writ of certiorari in the above entitled cause was filed in the Supreme Court of the United States on the 27th day of May, A. D. 1926. A printed copy of the record and a printed copy of the petition and brief are served upon you herewith.

New York City, May 27, 1926.

Yours, etc.,

DANIEL DAVENPORT,
CHARLES MARTINDALE,
WALTER GORDON MERRITT,
Counsel for Bedford Cut Stone Company, et als., Petitioners.

Service of a copy of the foregoing petition and notice acknowledged this day of May, A. D. 1926.